

The Hon. Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KIMBERLEY J. DAVIS,)
Plaintiff,)
v.)
PORT ANGELES SCHOOL DISTRICT,)
AMITY BUTLER, and her marital community,)
PATRICIA REIFENSTAHL, and her marital)
community,)
Defendants.)

No. 3:20-cv-05448-BHS-SKV

REPLY DECLARATION OF LUCY CLIFTHORNE

I declare the following under penalty of perjury under the laws of Washington State.

1. Attached as Exhibit 1 is a true copy of an excerpt from the transcript of the Deposition of Kimberley J. Davis, with the lines cited in the Defendants' reply brief highlighted.

2. Attached as Exhibit 2 is a printout from a publicly available website, highlighting the dates of the spring vacation for Franklin Elementary School in the Port Angeles School District in the 2018-19 school year.

DATED in Olympia, Washington, this 25th day of June, 2021.

/s/ Lucy R. Clifthorne

Lucy R. Clifforne, WSBA No. 27287
1201 Pacific Ave., Suite 1900
Tacoma, Washington 98401-1315
253-383-3791 (Tel.)
lclifforne@vjglaw.com
*Attorneys for Defendants Port Angeles
District and Amity Butler*

EXHIBIT 1

<p>1 the time of the incidents that I observed. So I had a 2 lot of data going on in the classroom. Some of it was 3 taken in the classroom at the moment, like behavioral 4 stuff. Others was taken home so I could keep up on it. 5 Q Did you keep up on it? 6 A Yes, I did. 7 QOkay. And so when you were investigated for falsifying 8 student records, there were several records that you 9 recorded data for students that allegedly occurred on 10 days they were absent. 11 So what happened there? 12 A Well, like I said before, they were not records. These 13 were just my own personal notes and data in the 14 classroom. So those were not student records. So I 15 never falsified student records ever. 16 Q So if you left the district voluntarily to take another 17 job, you would have taken those notebooks with you? 18 A I probably would have cleaned them out of all of the 19 information and taken the actual notebook, the physical 20 notebook, with me. 21 Q And you would have left the information at the district? 22 A I would have shredded it. 23 Q You would have shredded data regarding your students? 24 A Well, it was my own personal data for the classroom. If 25 I was leaving the district or leaving the classroom, I</p>	<p>Page 226</p> <p>1 falsification of student records; right? 2 A That's correct. 3 Q Paragraph 4.78 through 4.82. These are short ones. So 4 I'm going to start with 4.78. 5 Is it your belief that as to these allegations as to 6 your charge of discrimination with EEOC, is it your 7 belief that -- strike that. 8 Is it your belief that the district reported you to 9 OSPI's Office of Professional Practices, knowing that its 10 allegations against you were false? 11 A I don't know why they reported to OSPI. I mean, I 12 don't -- I can't speculate about that. 13 QOkay. Are you familiar with the rules of professional 14 practices for certificated educators? 15 A Yes. 16 QAre you aware that falsification of student data is a 17 reportable offense? 18 A Yes, I'm aware of that. 19 QDo you believe that Carole Copeland's complaints against 20 you regarding falsifying student data was false? 21 A Yes, I believe it was completely inaccurate. 22 QDo you believe that Carole Copeland had some sort of 23 reason to file a false complaint about you? 24 A I think that Mrs. Butler had her going and reporting to 25 her about anything that she -- I don't know. I really</p>
<p>1 wouldn't require taking it with me. 2 Q Okay. In Paragraph 4.77, you allege that you filed a 3 formal complaint of discrimination based on sexual 4 orientation against Ms. Butler, Ms. Reifenstahl, 5 Ms. Blore, and Ms. Bolinger. 6 Was this the only formal complaint of discrimination 7 you filed with the district during your 20 years of 8 employment there? 9 A Yes. 10 Q Okay. So despite two years of the ongoing alleged 11 targeting, bullying, isolation, professional disrespect, 12 false allegations and open hatred that you allege in this 13 paragraph, this was your first and only complaint of 14 discrimination? 15 MR. GALLAGHER: Object to the form. 16 Asked and answered. 17 A Yes. That's the only complaint because I kept going to 18 my union president and reporting things, and he said 19 don't get a lawyer. He told me not to go to HR. He told 20 me not to go to the special ed director. 21 Q (By Ms. Maynard) And you never filed a grievance with 22 your union during that time either; correct? 23 A That's correct. I was told not to. 24 Q When you filed your formal complaint of discrimination, 25 you had already been placed on administrative leave for</p>	<p>Page 227</p> <p>1 don't know actually. I feel like I'm speculating on 2 somebody else's actions. 3 Q Did you have a -- describe -- let me -- let's see. 4 Tell me your about your relationship with 5 Ms. Copeland. Was it a positive relationship at any 6 point in time? 7 A I felt like it was. I felt like her and I had a very 8 good working relationship. If she had concerns, she 9 never came to me with them, and I encouraged the paras to 10 come to me with their concerns so we could problem-solve 11 together. So I was not aware at all that her and I had 12 any sort of friction professionally. I felt like she 13 respected me, I felt like I respected her. So I was not 14 aware of any sort of interpersonal issues. 15 Q Did your paras have access to your notebooks? 16 A Yes. 17 MR. GALLAGHER: Object to the form. 18 Q (By Ms. Maynard) And why would they have access, if that 19 was your personal property? 20 A Because a lot of times we would be writing about 21 behavioral things that occurred, and so there's plenty of 22 times during the day when the paras are supervising 23 students, for example, outside on recess when I'm not 24 there with them, so the paras were given access to the 25 data notebooks so that they could write down things that</p>

<p style="text-align: right;">Page 230</p> <p>1 they had witnessed if I hadn't seen it.</p> <p>2 Q So the notebooks contained para statements and</p> <p>3 observations about students?</p> <p>4 A The notebooks contained observations written by whoever</p> <p>5 observed the child.</p> <p>6 Q Okay. And so at one point, Carole Copeland claimed that</p> <p>7 she saw your notebooks blank, at least a certain number</p> <p>8 of pages blank, and that after spring break when those</p> <p>9 notebooks reappeared in the classroom, they were filled</p> <p>10 with data. Can you explain this?</p> <p>11 A Yeah. Absolutely. The data that she was looking for was</p> <p>12 the Styer Fitzgerald data. And only two of my ten</p> <p>13 students were working on the Styer Fitzgerald curriculum,</p> <p>14 so those two students should have had Styer Fitzgerald</p> <p>15 data in them.</p> <p>16 When I asked the paras -- so the paras were in</p> <p>17 charge of doing the Styer Fitzgerald while I taught</p> <p>18 smaller groups. So they would do one-on-one instruction</p> <p>19 with Styer Fitzgerald. I would do smaller groups.</p> <p>20 Every single day they were asked by me to do Styer</p> <p>21 with the two students whenever their schedule allowed.</p> <p>22 So they were supposed to be keeping the Styer Fitzgerald</p> <p>23 data. They were also supposed to be helping me keep the</p> <p>24 behavioral anecdotes. So they would have access to it.</p> <p>25 So if she is looking for Styer Fitzgerald data on</p>	<p style="text-align: right;">Page 232</p> <p>1 A It is my understanding that special ed teachers are</p> <p>2 required to do an awful lot of paperwork, and so the</p> <p>3 special ed teachers that I know do their work as they can</p> <p>4 when they take it home on the weekends, lots of teachers</p> <p>5 take work home on the weekends, and it's my understanding</p> <p>6 that you -- you really can't get that amount of data and</p> <p>7 all the paperwork, the IEPs and all of that that you have</p> <p>8 to do in the day while you have students in your</p> <p>9 classroom. It's just completely impossible. So I think</p> <p>10 it is pretty common that special ed teachers take a lot</p> <p>11 of work home to do at home.</p> <p>12 Q You think that that is an accurate record of what is</p> <p>13 happening with that student at any given point in time?</p> <p>14 MR. GALLAGHER: Object to the form.</p> <p>15 Q (By Ms. Maynard) Do you think that accurately -- that</p> <p>16 practice of noting the date you record the data as</p> <p>17 opposed to the date that it was observed, is an accurate</p> <p>18 picture of where a student is at any point in time in</p> <p>19 their progress?</p> <p>20 A Well, the only way to find out if it's accurate is to</p> <p>21 redo the data. I mean, isn't it -- it's anecdotal, first</p> <p>22 of all, so you're just writing down what you observed.</p> <p>23 And when you're collecting data on academics or goals,</p> <p>24 you're just writing down what you saw, what they</p> <p>25 produced, what the child did throughout the week.</p>
<p style="text-align: right;">Page 231</p> <p>1 all ten students, she would only have found it in two of</p> <p>2 the notebooks. And if she was looking in the right place</p> <p>3 for the academic data, it was in there. So -- and I did</p> <p>4 take the notebooks home, like I said, frequently to keep</p> <p>5 up with the amount of work that I had.</p> <p>6 Q Okay. Did you record data for students with the date</p> <p>7 that it happened --</p> <p>8 A I recorded --</p> <p>9 Q -- or did you -- I'm sorry. Let me just finish. That's</p> <p>10 okay.</p> <p>11 Did you record Styer Fitzgerald data, or any data</p> <p>12 for that matter, as having occurred on the day it</p> <p>13 occurred, or did you assign it some other date?</p> <p>14 A Ms. Maynard, I took the notebooks home and recorded the</p> <p>15 date that I was writing the data, not the date that I</p> <p>16 observed it. So when I took the notebooks home every</p> <p>17 week, I took them home, wrote down what I had seen</p> <p>18 throughout the week or what my notes had said, and then</p> <p>19 took them back to school.</p> <p>20 Q Okay. So I'm clear, when you recorded the data in your</p> <p>21 notebooks, you associated it with the date that you wrote</p> <p>22 it in your notebooks and not the date you observed it?</p> <p>23 A That is correct.</p> <p>24 Q Is it your understanding that this is standard practice</p> <p>25 among special ed teachers?</p>	<p style="text-align: right;">Page 233</p> <p>1 Q But if you're not pinpointing the exact time it happened,</p> <p>2 how do you assess benchmarks for that student and</p> <p>3 progress?</p> <p>4 A You take the baseline data in the beginning when you</p> <p>5 first get to know them and then build your instruction on</p> <p>6 your goals based on their current levels of performance.</p> <p>7 Q And so if you were to compare their progress on</p> <p>8 February 16th, 2021, to their benchmark which was set on</p> <p>9 January 1, 2021, and the data collected on the 16th was</p> <p>10 instead dated for when it was put in your notebooks,</p> <p>11 which is a separate date, how would you judge progress</p> <p>12 accurately between those two dates?</p> <p>13 A Well, you would look at a whole lot of different</p> <p>14 representations of what the child was doing. So you</p> <p>15 would look at work samples. You'd look at conversations</p> <p>16 that you had with the child. You'd look at what they did</p> <p>17 throughout the whole week to see if it was similar or --</p> <p>18 Q Maybe I wasn't clear in my definition of "data." So</p> <p>19 let's make sure we agree on this.</p> <p>20 If we're talking about, say, counting, how would you</p> <p>21 assess a student as to where they are with counting?</p> <p>22 Would you say, for example, on such-and-such date, this</p> <p>23 student was able to count to ten five times out of ten</p> <p>24 times? Is that accurate? Is that some sort of data that</p> <p>25 you would collect?</p>

EXHIBIT 2

		Today		April 2019		Print		Week	Month	Agenda	
Sun	Mon	Tue	Wed	Thu	Fri	Sat					
31	Apr 1	2	3	4	5	6	No School K12 + Spring Break				
7	8	9	10	11	12	13					
14	15	16	17	18	19	20					
21	22	23	24	25	26	27	Public School Volunteer Week				
28	29	30	May 1	2	3	4					
							9:30am Spring	7pm PASD I			

Events shown in time zone: Pacific Time - Los Angeles

Calendar

Today		Friday, June 25		Print		Week	Month	Agenda	
Friday, June 25									
9:00am	High School Summer School								
Monday, June 28									
9:00am	High School Summer School								
Tuesday, June 29									
9:00am	High School Summer School								
Wednesday, June 30									
9:00am	High School Summer School								
Thursday, July 1									
9:00am	High School Summer School								
Friday, July 2									
9:00am	High School Summer School								
Sunday, July 4									